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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 775

SILAS MASON COMPANY, INC., WALSH CONSTRUCTION COMPANY, ET AL., APPELLANTS,

vs.

TAX COMMMISSION OF THE STATE OF WASHINGTON ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED MARCH 3, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 773

SILAS MASON COMPANY, INC., WALSH CONSTRUCTION COMPANY, ET AL., APPELLANTS,

vs.

TAX COMMMISSION OF THE STATE OF WASHINGTON ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX.

	Original	Print
Record from Superior Court of Thurston County	1	1
Amended complaint	2	1
Exhibits 1 to 5, inc.—Resolutions by Special Board relating to Grand Coulee dam	23	17
Exhibit 6—Contract between United States and Columbia Basin Commission, June 30, 1933	29	21
Exhibit 7—Contract between United States and Columbia Basin Commission, November 1, 1933	35	27
Exhibit 8—Contract between Silas Mason Co., Inc., Walsh Construction Co., Atkinson-Kier Co. and Mason-Walsh-Atkinson-Kier Co.	46	35
Answer to first amended complaint	50	38
Reply to answer	61	46
Opinion, Wilson, J.	64	47
Judgment	74	55
Proceedings in Supreme Court of Washington	75	56
Opinion, Geraghty, J.	75	56

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	Original	Print
Petition for appeal, assignments of error and prayer for reversal	90	69
Order allowing appeal	137	71
Citation and service (omitted in printing)	139	
Bond on appeal (omitted in printing)	142	
Præcipe for transcript of record	146-a	72
Statement of facts from Superior Court	148	73
Colloquy	148	73
Stipulations as to facts	150	75
Testimony of Guy F. Atkinson	168	89
Stipulations as to facts	184	102
Clerk's certificate (omitted in printing)	196	
Statement of points to be relied upon and designation as to printing record	197	111

[fol. 1] [File endorsement omitted]

[fol. 2]

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR THURSTON COUNTY

No. 15850

SILAS MASON COMPANY, INC., WALSH CONSTRUCTION COMPANY, Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier, Copartners as Atkinson-Kier Company, and Mason-Walsh-Atkinson-Kier Company, Plaintiffs,

vs.

TAX COMMISSION OF THE STATE OF WASHINGTON, HAROLD H. HENNEFORD, Thomas S. Hedges and T. M. Jenner, Constituting the Tax Commission of the State of Washington, Defendants

AMENDED COMPLAINT—Filed August 26, 1935

For an amended cause of action plaintiffs allege:

1. Plaintiff Silas Mason Company, Inc., is a corporation organized and existing under the laws of the state of Delaware, and is a citizen and resident of such state. Plaintiff Walsh Construction Company is a corporation organized and existing under the laws of the state of Iowa, and is a citizen and resident of such state. Plaintiff Atkinson-Kier Company is a copartnership consisting of Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier, all of whom are citizens and residents of the state of California. Plaintiff Mason-Walsh-Atkinson-Kier Company is a corporation organized and existing under the laws of the state of Delaware, and is a citizen and resident of that State. None of the plaintiffs other than the Mason-Walsh-Atkinson-Kier Company is engaged in any business, calling, occupation, vocation or work within the State of Washington. The Mason-Walsh-Atkinson-Kier Company, whose nature and activities will later be described, and whose occupations [fol. 3] are conducted wholly on land within the state over which it has ceded jurisdiction to the United States, has nevertheless elected to treat its operations as being partially within the state, and has paid to the State its annual license fee last due.

2. The defendants Harold H. Henneford, Thomas S. Hedges, and T. M. Jenner, constitute the Tax Commission of the State of Washington.

3. For a number of years the people of the Pacific Northwest have been, and they are now, much interested in the development of the Columbia River and its principal tributaries. Of the rivers in the United States the Columbia River is second in size only to the Mississippi River. Its source is in lakes in British Columbia, which in turn are fed from mountain streams and lakes of the Rocky Mountains in both Canada and the United States. Above its lower reaches, the river partakes of the character of a mountain stream, its fall being great, its current swift, and its course marked at intervals of a few miles by rapids flowing over and through rocky masses of such magnitude as to render by the construction of canals and locks. The alternations in its flow are great, its period of high water depending for time and intensity upon the melting of snow in the mountains where are its sources. Its principal tributary is the Snake River whose waters are drawn from the Bitter Root and Rocky Mountains in Idaho and Montana. The Snake River has the same characteristics as the Columbia River. With improvements that have been made and are contemplated, the Columbia is commercially navigable from its mouth to the mouth of the Snake, and the Snake from its junctions with the Columbia to the confluence of the Snake [fol. 4] and Clearwater. Above the mouth of the Snake, the Columbia is navigable locally, from pool to pool as far as the mouth of the Okanogan River, and that stream in turn is navigable for some distance. All such nagivation is difficult and is not commercially feasible because of the alternations in the flow of the stream, its great fall and consequent swiftness of current, and the rapids and obstructing masses of rock which so frequently dot its course. The same characteristics which impair or destroy the navigability of the Columbia, render it an ideal stream for the development of hydroelectric power, and it is the greatest power stream in the United States, perhaps in the world. For the greater part of its length within the United States, the Columbia flows through an arid country, the land being immensely productive and rich when placed under irrigation, but of no value without irrigation.

4. The course of the Columbia in the United States for the greater part of its length lies wholly within the state of Washington. From shortly below the mouth of the Snake, the Columbia is the boundary between the states of Washington and Oregon. There has been sporadic improvement of the Columbia extending over a good many years. The work has been done principally by the United States, for the improvement of navigation. The pressure of the people of the northwest for more comprehensive improvement of the stream and its tributaries caused an extended and detailed survey of the subject by the Corps of Engineers of the War Department, and in 1932 the Chief of Engineers of the United States Army recommended a comprehensive plan for the improvement and development of the Columbia River within the United States. This recommendation took into consideration the improvement of the river and the use of its waters for the purposes of navigation, flood control, power development, and irrigation. It recommended the construction of ten dams across the river at various points within the state of Washington and where the river is the [fol. 5] boundary between Washington and Oregon. The uppermost of these dams was one at the head of Grand Coulee, Washington, a point wholly within the State of Washington, about 150 miles below the international boundary line and 274 miles above the mouth of the Snake River. This dam was the most important step in the plan of improvement proposed. As recommended, it represented an estimated cost of $204,000,000 of an estimated total cost of $711,000,000 for the ten dams. It would create a lake 150 miles long extending to the international boundary, afford irrigation facilities for 1,200,000 acres of irrigable land, admit of the production of electrical power at a lower cost than it could be produced at any other point in the United States, control the flow of flood waters and give storage facilities for the smaller dams below it, and benefit the lower reaches of the river for purposes of navigation and flood control. The plan of improvement recommended was commonly referred to thereafter, both in the northwest and in Congress, as the Columbia Basin project, and the dam at the head of the Grand Coulee was similarly known as the Grand Coulee or Coulee dam.

5. By Chapter 81, Laws 1933, the Legislature of Washington created the Columbia Basin Commission for the purpose